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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1610

CHARLES DAVIS, INDIVIDUALLY AND ON BEHALF OF HIS MINOR CHILDREN, CHARLES DAVIS, JR. AND JERRY DAVIS,

Petitioners,

versus

ROYAL-GLOBE INSURANCE COMPANIES (GLOBE INDEMNITY COMPANY) AND LOUIS C. PHILIPS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Respondents, Globe Indemnity Company and Louis C. Philips, in opposition to the Petition of (Mrs.) Charles Davis for Writ of Certiorari to the Supreme Court of the State of Louisiana, with respect, shows:

OPINIONS BELOW

The JUDGMENT of the Civil District Court for the Parish of Orleans, State of Louisiana, dated January 30, 1968, is not published. (Only the "verdict of jury" is included in the appendix of petitioner's brief seeking this Writ.)

The Opinion of the Fourth Circuit Court of Appeals for the State of Louisiana is reported at 223 So. 2d 912.

The Supreme Court of Louisiana Opinion is reported at ____ La. ____, 242 So. 2d 839. (Respondents maintain that this decision of the highest Court of the State of Louisiana was based not only on "appellate review of facts," but also on very crucial POINTS OF LAW, namely the applicability vel non of Louisiana CIVIL CODE Articles 2322, and 670, and the **legal** interpretations of said statutes by the State Courts!)

QUESTIONS PRESENTED

Properly stated, Respondents submit the questions presented are:

1. Does the Seventh Amendment of the United States Constitution apply **to the State Courts,** on a "State-created cause of action"?

2. If applicable, then does the said Seventh Amendment prohibit State Court appellate review of "both the law and the facts," as provided by Louisiana Constitution Article 7, Section 10?

3. If applicable, did the specific action of the Louisiana Supreme Court, in this case at bar, violate said Seventh Amendment?

STATEMENT OF THE CASE

On May 5, 1965, the original petition was filed, by **Charles Davis,** individually and on behalf of his minor children, Charles Davis, Jr., and Jerry Davis, seeking damages against Louis C. Philips, and his insurer, Royal-Globe Insurance Company (actually Globe Indemnity Com-

pany), wherein said petitioner alleged that he was married to Pauline Davis and that the two (2) children involved in the suit were born of said union; that since January 30, 1964, petitioner, his wife, and the said children, lived at 4811 Prytania Street, lower apartment, (New Orleans, Louisiana) owned by defendant Philips; that the children became ill on or about May 13, 1964, allegedly due to:

> ". . . defendant's negligence and failure to repair the ceiling that large flecks of paint and plaster falling from the ceiling to the floor resulting in these children of tender age being able to eat the same and suffering as a result acute lead poisoning."

Both defendants filed a PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION, with attached Memorandum of Authorities in support thereof. After hearing argument, the Trial Judge, without any written reasons therefor, overruled these exceptions and ordered defendants to answer. Defendants filed responsive pleadings, denying any and all liability which pleadings were filed on June 30, 1965.

On January 16, 1967, by *ex parte* application, Mrs. Pauline Green Davis filed application for appointment as Provisional Tutor of the children involved in the suit, and at the same time filed a "Motion to Substitute Party Plaintiff." During the course of the trial, when plaintiffs' evidence disclosed that there was never any marriage between Charles Davis and Pauline Green "Davis," defendants filed another Peremptory Exception and Memorandum in support thereof challenging the legal right, or interest, of original plaintiff, Charles Davis, as well as Mrs. Pauline Green "Davis" to institute this lawsuit, and, further, pleading prescription of one (1) year under Louisiana Civil Code Article 3536. These exceptions were overruled by the Trial Judge.

Trial was had, before a jury, and the jury verdict was rendered against both defendants, in solido, in favor of Mrs. Pauline Davis on behalf of her minor son, Charles Davis, Jr., in the amount of $115,000.00, and on behalf of Jerry Davis, in the sum of $2,500.00 and for all costs, but limiting Globe's liability to its policy limits of $50,000.00 for each claim.

Defendants timely filed a Motion for New Trial and Alternatively a Remittitur, with supporting Memorandum which the Judge denied. Judgment was entered on the jury verdict on January 30, 1968, and defendants filed Petition for Appeal, Suspensive and Devolutive.

Suspensive appeals were effected from the Trial Court judgment on behalf of both defendants, Philips and Globe, and on June 2, 1969, the Court of Appeal, Fourth Circuit, affirmed the Trial Court Judgment.

Application for rehearing was filed with the Court of Appeal, Fourth Circuit, by Philips and Globe, and was denied by the said Court on July 7, 1969.

A Petition for a Writ of Certiorari, or Review, was filed with the Louisiana Supreme Court on August 4, 1969, presenting the following "issues"; "questions of Law"; and "assignments of errors":

> **"ISSUES**
>
> Is a LANDLORD responsible in damages when a tenant's children "eat paint" from the rented premises, when the evidence is clear that the landlord did **not** use any "lead-base" paint, at any time, inside the said property?
>
> Is there any logical legal distinction to be made when the plaintiff alleges that the children "ate

paint" from **inside** the rented premises, to make the landlord responsible, but to free the landlord from liability if the allegation is that the child ate paint "from the outside" of the same property?

QUESTIONS OF LAW

1. Is "eating the premises" an extraordinary and unreasonable use of the premises?

2. Is the New York District Court decision, *Acosta v. Irdank Realty Corporation*, applicable in Louisiana, in the face of the **later** Louisiana decision in *Montgomery v. Cantelli*, wherein writs were refused by the Louisiana Supreme Court?

3. Was there an intervening or "superseding" negligence of the mother and "grandmother" of the minor plaintiffs sufficient to free Philips from any liability herein?

4. Should the absence of Mrs. Catherine LaFleur, at the trial, constitute any "inference" against defendants?

5. Was the **last** paint sample (the only one that contained lead) subject to contamination, so as to destroy the "chain of evidence" and leave plaintiff's case with no proof of causation traceable to Philips?

6. Should the trial court, and the Fourth Circuit Court of Appeal, have sustained the **second** peremptory exception of no right of action, and prescription, filed by defendants during the course of trial?

ASSIGNMENT OF ERRORS:

1. The Honorable Court of Appeal committed error in not holding that "eating the premises" is an unreasonable, abnormal, and extraordinary use of the premises, and sustaining the defendants' **first** PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION.

2. The Honorable Court of Appeal committed error in relying on the New York District Judge's decision in *Acosta v. Irdank Realty* in the face of the later Louisiana decision in *Montgomery v. Cantelli*, decided by the same Fourth Circuit Court of Appeal, wherein writs were denied by the Louisiana Supreme Court.

3. The Court of Appeal committed error in refusing to hold that there was intervening, or superseding, negligence on the part of the mother and "grandmother" of the plaintiffs herein, sufficient to free Philips from any liability herein.

4. The Court of Appeal committed error in entertaining an "inference" against defendant in view of the absence of Mrs. Catherine LaFleur at the trial.

5. The Court of Appeal committed error in refusing to find that the last paint sample (the only one that contained lead) was subject to contamination, and in refusing to hold that the procedure in procuring this evidence, used by claimant's "investigator" destroyed the legal "chain of evidence."

6. The Court of Appeal committed error in refusing to sustain the second peremptory exception of no cause of action and prescription filed by the defendants during the course of trial.

7. The Honorable Court of Appeal committed error in refusing to find that the Trial Judge prejudiced the trial jury in delivering plaintiffs' special charges to the jury Nos. 7, 8, and 12.

8. The Honorable Court of Appeal committed error in not holding that the judgment herein was contrary to law and/or excessive because the jury award was based on speculative and conjectural testimony."

The Supreme Court of Louisiana granted Defendants writs on November 6, 1969, and eventually, after full

briefs, and oral arguments, reversed the State Court of Appeal, rendering its decision, which is now under consideration.

ARGUMENT IN OPPOSITION TO GRANTING WRIT OF CERTIORARI

I.

"NOTHING NEW" PRESENTED!

Respondents suggest that **this Court** has already considered ALL of the alleged issues relied on by Petitioner Davis herein, as recently as **October 13, 1969,** and REFUSED to grant writs, in a Louisiana case! (See *MAYS, ET AL V. McKEITHEN, ET AL,* 396 U.S. 868, 90 S. Ct. 108, 24 L. Ed. 2d 121, which we quote as follows:

> "Docket No. 44, Misc.
>
> October 13, 1969 — Motion of the Louisiana Trial Lawyers Association for leave to file brief, as amicus curiae granted. Petition for Writ of Certiorari to the Supreme Court of Louisiana **denied**!"

The above-cited MAYS, et al lawsuit involved a State Court jury finding in favor of the plaintiffs, and the jury award of $150,000.00, which was reversed, on the facts, by the First Circuit Court of Appeals for the State of Louisiana. The plaintiffs applied to the Supreme Court of the State of Louisiana for writs directed to the Louisiana First Circuit Court of Appeals, which were denied.

Then plaintiffs filed "Petition for Writ of Certiorari" with the SUPREME COURT **OF THE UNITED STATES,** and the LEGAL ISSUE presented by the said plaintiffs in the MAYS, ET AL Petition for Writs is "on all fours" with the alleged Federal constitutional questions presented by Petitioner Davis in the present Writ application!

Under the section styled "QUESTIONS PRESENTED", the plaintiffs in MAYS, ET AL asked the United States Supreme Court the following:

> "1. Is the last clause of the Seventh Amendment proscribing re-examinaion of facts found by a jury obligatory on a state court, where the Legislature of that state has granted to its citizens by statute plenary right to trial by jury of all issues of fact involved in claims in the nature of suits at common law?
>
> 2. Is the proscription against re-examination of jury findings by any court such a fundamental part of due process as to fall under the protective aegis of the due process clause of the Fourteenth Amendment and thus obligatory on state courts, where citizens of such a state have been granted the statutory right of trial by jury of all issues of fact involved in claims in the nature of suits at common law?"

The plaintiff attorneys, in the MAYS, ET AL Petition for Writs, completely briefed all possible legal issues dealing with the subject matter now considered, including each and every issue raised by the plaintiffs in the case at bar (as well as others not here presented) and it is interesting to note that the United States Supreme Court even **granted** the Motion of the Louisiana Trial Lawyers Association to file a brief, as amicus curiae.

Subsequently, on October 13, 1969, the United States Supreme Court DENIED WRITS in *MAYS, ET AL vs. McKEITHEN, ET AL*, 396 U.S. 868, 90 S. Ct. 108, 24 L. Ed. 2d 121.

Under the circumstances applicable here, Respondents suggest that this Petition does not qualify for the granting of a Writ under Rule 19(1)(a) of this Honorable Court.

II.

SEVENTH AMENDMENT OF U. S. CONSTITUTION NOT APPLICABLE IN "STATE COURTS", ON A "STATE-CREATED" CAUSE OF ACTION!

At the core of plaintiffs' claims is the assertion that the Seventh Amendment's requirement of a jury trial by the common law in civil cases is a right, privilege and immunity of the citizens of the United States and as such may not be denied to Louisiana citizens due to the privileges and immunities clause of the Fourteenth Amendment. In other words, plaintiffs allege (or assume) that the Seventh Amendment **applies to the States.** Not only is this assumption unwarranted, in fact, but the directly opposite view has been consistently and repeatedly held to be the law by the Supreme Court of the United States. (It should be noted at the outset that we are here dealing with a trial in a State Court, **on a State-created cause of action;** for trials in a State Court on a federally-created cause of action, e.g. Federal Employers Liability Act or the Jones Act, a different situation prevails).

In *Barron v. Baltimore*, 7 Pet. 242, 8 L. Ed. 672, (1833), Chief Justice John Marshall established the position that the first ten amendments to the U. S. Constitution were limitations on the Federal government, and **not upon the States.** "The amendments contain no expression indicating an intention to apply them to State Governments. The Court cannot so apply them."

The passage of the Fourteenth Amendment did not overrule Justice Marshall's holding, but rather modified it to the extent that when rights secured by the U. S. Constitution are of such fundamental importance to due proc-

ess of law, a State may not deprive a person of those rights, *Twining v. N. J.*, 211 U.S. 78, 96, 29 S. Ct. 14, 18. The Supreme Court has not held that trial, by jury, **in a State Court** is a fundamental element of due process of law.

The first case to directly consider the applicability of the Seventh Amendment to the States was *Edwards v. Elliott*, 88 U.S. 487, 21 Wall 532 (1874), which dismissed the contention with the passing remark, "That it (the Seventh Amendment) does not apply to trials in the State Courts."

This question was more squarely put to the Supreme Court two years later as to whether the Fourteenth Amendment made trial by jury in civil cases obligatory in State Courts. In the case of *Walker v. Sauvinet*, 92 U.S. 90, 23 L. Ed. 678 (1876), petitioner alleged that a Louisiana statute giving a judge the duty to direct a verdict when a jury was unable to agree on a decision violated the Seventh and Fourteenth Amendments and was unconstitutional. The court held the Statute constitutional and valid!

> "So far as we can discover from the record, the only federal question decided by either one of the courts below was that which related to the right of Walker to demand a trial by jury, notwithstanding the provisions of the [Louisiana] Act of 1871 to the contrary.
>
> "By Article VII of the Amendments it is provided, that 'In suits at common law . . . the right of trial by jury shall be preserved.' This, as has been many times decided, relates only to trials in the courts of the United States. *Edwards v. Elliott*, 21 Wall. 557, 22 L. Ed. 492 (Sic). The States, so far as this Amendment is concerned, are left to regulate trials in their own courts in their own way. A trial by jury is not a privilege or immunity of national citizenship, which the States are forbidden by the

> Fourteenth Amendment to abridge. A State cannot deprive a person of his property without due process of law; but this does not necessarily imply that all trials in the state courts affecting the property of persons must be by jury. This requirement of the Constitution is met, if the trial is had according to the settled course of judicial proceedings. *Murray v. Hobken L. & I. Co.*, 18 How. 280, 15 L. Ed. 376. . . . Here the State Court has decided that the proceeding below was in accordance with the law of the State; and we do not find that to be contrary to the Constitution or any law or treaty of the United States."

The principles enunciated in *Walker v. Sauvinet* were frequently quoted by the Supreme Court as well as expanded in the four decades following that decision. Mr. Justice Holmes, speaking for a unanimous Court in *Chicago, R. I. & P. R. Co. v. Cole*, 251 U.S. 54, 40 S. Ct. 68 (1919), summarized the State of the law in this area as follows:

> "There is nothing, however, in the Constitution of the United States or its Amendments that requires a State to maintain the line with which we are familiar between the functions of the jury and those of the Court. It may do away with the jury altogether, *Walker v. Sauvinet*, 92 U.S. 90, 23 L. Ed. 678; modify its constitution, *Maxwell v. Dow*, 176 U.S. 581, 20 Sup. Ct. 448, 44 L. Ed. 597; the requirements of a verdict, *Minneapolis & St. Louis R. R. Co. v. Bombolis*, 241 U.S. 211, 36 Sup. Ct. 595, 60 L. Ed. 961, L.R.A. 1917A, 86 Ann Cas. 1916E, 505; or the procedure before it, *Twining v. New Jersey*, 211 U.S. 78, 111, 29 Sup. Ct. 14, 53 L. Ed. 97; *Frank v. Mangum*, 237 U.S. 309, 340, 35 Sup. Ct. 582, 59 L. Ed. 969. As it may confer legislative and judicial powers upon a commision not known to the common law, *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 29 Sup. Ct. 67, 53 L. Ed. 150; it

> may confer larger powers upon a jury than those that generally prevail. Provisions making the jury judges of the law as well as of the facts in proceedings for libel are common to England and some of the States, and the controversy with regard to their powers in matters of law more generally as illustrated in *Spark v. United States*, 156 U.S. 51, 715, 15 Sup. Ct. 273, 39 L. Ed. 343, and *Georgia v. Brailsford*, 3 Dall. 1, 4, 1 L. Ed. 483, shows that the notion is not a novelty. In the present instance the plaintiff in error cannot complain that its chance to prevail upon a certain ground is diminished when the ground might have been altogether removed."

The "leading case" of *Walker v. Sauvinet, supra*, has been cited, with approval, by our United States Supreme Court, down through the years and reference is made to *Palko v. Connecticut*, 302 U.S. 319, 58 Sup. Ct. 149, 151 (1937); *Malinski v. New York*, 324 U.S. 401, 65 Sup. Ct. 781, at page 788 (1944); *Stein v. New York*, 346 U.S. 156, 73 Sup. Ct. 1077 at page 1090 (1953); *Hauge v. C.I.O.*, 59 Sup. Ct. 954 (1939) at page 966.

The lower federal courts have held that the issue is so foreclosed as to fail to present a substantial federal question. In point is *N. J. Chiropractic Association v. State Board*, 79 Fed. Sup. 327 (D.C. N.J., 1948):

> "The rule in *Palko v. Connecticut*, 302 U.S. 319, at page 324, 58 S. Ct. 149, 151, 28 L. Ed. 288, governs as it is therein stated in the following language:
>
> 'The Sixth Amendment calls for a jury trial in criminal cases and the Seventh for a jury trial in civil cases at common law where the value in controversy shall exceed $20.00. This court has ruled that consistently with those amendments trial by jury may be modified by a state or abolished together. *Walker v. Sauvinet*, 92 U.S. 90, 23 L. Ed. 678; *Maxwell v. Dow*, 176 U.S. 581, 20 S. Ct. 448,

494, 44 L. Ed. 597; *New York Central R. Co. v. White*, 243 U.S. 188, 208, 37 S. Ct. 247, 61 L. Ed. 667, L.R.A. 1917 D.I. Ann. Cas. 1917D, 629; *Wagner Electric Mfg. Co. v. Lyndon*, 262 U.S. 226, 232, 43 S. Ct. 589, 591, 67 L. Ed. 961.' Again, the plaintiffs have failed to present a substantial federal question for consideration of the court because prior decisions of the United States Supreme Court have foreclosed this subject."

Also directly in point is *Olsen v. Trust Co. of Chicago*, (C.A. 7th, 1957) 245 F. 2d 522, certiorari denied, 355 U.S. 896, 78 S. Ct. 270:

"It is clear there is no federal question involved in the case at bar. The Seventh Amendment of the United States Constitution applies to trials in the United States Courts. *Bute v. People of State of Illinois*, 333 U.S. 640, 657 (footnote), 68 S. Ct. 763, 92 L. Ed. 986. Trial by jury in civil actions in State Courts may be modified by a state or abolished altogether. *Walker v. Sauvinet*, 92 U.S. 90, 23 L. Ed. 678; *Maxwell v. Dow*, 176 U.S. 581, 20 S. Ct. 494, 44 L. Ed. 597; *New York Central Railroad Company v. White*, 243 U.S. 188, 208, 37 S. Ct. 247, 61 L. Ed. 667; *Wagner Electric Manufacturing Company v. Lyndon*, 262 U.S. 226, 232, 43 S. Ct. 589, 67 L. Ed. 961.

"A denial of trial by jury in a state court is not a denial of due process of law under the Fourteenth Amendment. 'The Fourteenth Amendment neither implies that all trials must be by jury, nor guarantees any particular form or method of state procedure.' *Hardware Dealers' Mutual Fire Insurance Company of Wisconsin v. Glidden Co.*, 284 U.S. 151, 158, 52 S. Ct. 69, 71, 76 L. Ed. 214. . . .

"Ordinarily we are reluctant to dismiss an appeal upon motion. Usually we take the motion to dismiss with the cause and consider same when the case is submitted on the merits, but in the case at

> bar, it would be an imposition upon the defendants to inflict the expenses incident to an appeal when it is so clear that nothing that could be presented upon the hearings of the cause could change the obvious fact that this is a case where no federal question is involved, and the Federal Courts should not interfere with the processes and procedures of the State Court.
>
> "The appeal is dismissed at plaintiff's costs."

In another recent Federal decision, *Iacaponi v. New Amsterdam*, 258 Fed. Sup. 880 (W.D. Pa. 1966); affirmed 3rd Cir. 379 Fed. 2d 311; cert. denied 389 U.S. 1054, 88 Sup. Ct. 802, 19 L. Ed. 2d 849, held at page 844:

> "A litigant in a State Court civil action has no constitutional right to a trial by jury under the Seventh Amendment or under the due process clause of the Fourteenth Amendment. A State may establish its own procedures and practices with regard to the conduct of civil litigation including the right of trial by jury. *Hardware Dealers Mut. Fire Ins. Co. of Wis. v. Glidden Co.*, 284 U.S. 151, 52 S. Ct. 69, 76 L. Ed. 214 (1931). We find no denial of due process in this procedure and we further find that the procedure under the Workmen's Compensation Act of Pennsylvania is the exclusive remedy for the cause of action pleaded herein."

We conclude, therefore, that the state of the law is clear:

1. Trial by jury is not a privilege or immunity of citizens of the United States.
2. Trial by jury, per se, is not a requirement of due process of law.
3. The Seventh Amendment does not apply to the States.

In view of the unbroken and consistent line of deci-

sions supporting the above propositions, one may only conclude that the question raised by Petitioner Davis is foreclosed, and the law is settled!

III.

NO "SUBSTANTIAL FEDERAL QUESTION INVOLVED!"

There is NO CLAIM by Petitioner Davis herein that there is any discrimination as between Louisiana litigants, similarly situated, involved in a lawsuit in the State Courts of Louisiana! The only complaint is that there is a difference in appellate review of jury decisions as between the Federal and State Court judicial systems!

Here Petitioner Davis **chose the forum,** and elected to file suit in the State Courts of Louisiana, and should not now be heard to complain that she might have obtained a favorable result under the federal appellate procedures.

Further, even if plaintiffs had the right to a jury trial under the Seventh Amendment in which "no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law," their petition still fails to assert a substantial federal question because **a judge, at common law,** could set aside a jury verdict for insufficiency of the evidence. *Aetna Casualty & Surety Co. v. Yeatts*, C.C.A. 4th, 122 F. 2d 350 (1943), and *Sunray Oil Corp. v. Allbritton*, C.A. 5th, 197 F. 2d 475, 477-484. The U. S. Supreme Court has held in *Montgomery Ward & Co. v. Duncan*, 61 S. Ct. 189 at 194, 311 U.S. 243 (1940) that one of the reasons for Rule 59(a) is that when the verdict is against the weight of the evidence it should not stand. Even the most quoted definition of a jury trial recognizes this power of the judge:

> " 'Trial by jury' in the primary and usual sense of the term at the common law and in the American Constitutions . . . is a trial by a jury of 12 men, in the presence and under the superintendence of a judge empowered to instruct them on the law and to advise them on the facts and (except on acquittal of a criminal charge) to set aside their verdict, if, in his opinion, it is against the law or the evidence." *Capitol Traction Co. v. Hof*, 19 S. Ct. 580, 174 U.S. 1 (1899).

The common law, and present federal law and practice, sanction the propriety of the Supreme Court of Louisiana setting aside the jury verdict for insufficiency of the evidence, or for "manifest error." It is patently clear that even if Petitioner Davis' contention that the Seventh Amendment applies to the States is accepted, Petitioner may not be granted relief as the Seventh Amendment has not been violated. Therefore, the purported federal question asserted herein is insubstantial and jurisdiction should be denied!

IV.

SUPREME COURT OF LOUISIANA DID FIND "ERRORS OF LAW" SUFFICIENT TO JUSTIFY ITS DECISION!

In the Petition for Writs filed by Defendant in the State Supreme Court, Respondents assigned as error the trial court's jury instructions dealing with Louisiana Civil Code Articles 2322 and 670, contending that said statutes were NOT applicable to the facts at bar.

The State Supreme Court interpreted the crucial **legal phrase** "ruin" in said Article 2322, tracing same back to its source in the old French law ("ruine") in the Louisiana Code of 1808, and held that this statute, as well as Article

670, should NOT have been applied to this case!

Such constitutes a finding of "error of law" on the part of the lower State Courts, alone sufficient to warrant the decision of the Supreme Court of Louisiana.

This analysis **removes the foundation** of Petitioner's arguments that the Louisiana Supreme Court decision is based **only** "on questions of fact." Even taken alone, this conclusion is sufficient to justify denial of this writ application!

CONCLUSION

For the reasons above stated, the Petition for Writ of Certiorari to review the Judgment of the Supreme Court of Louisiana should be DENIED!

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, PAUL V. CASSISA, a member of the Bar of the United States Supreme Court, certify that a true copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari has been served on Counsel for Petitioner herein by depositing same in the United States mail, first class, postage prepaid, on this ..... day of May, 1971.

PAUL V. CASSISA